

US courts signal shift in the interpretation of “package” under COGSA

Recent decisions from the Southern District of New York, affirmed by the Second Circuit, suggest a more contractual approach to determining what constitutes a “package” under the Carriage of Goods by Sea Act (COGSA).

By giving effect to express package definitions in bills of lading, the courts may significantly reduce carriers’ limitation exposure and highlight the importance of carefully aligned contractual drafting.

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The package limitation

COGSA limits a carrier's liability to USD 500 per "package". However, the statute does not define the term, and US courts have historically taken a cargo-friendly approach. Where bills of lading referred to individual cartons, these were treated as the relevant packages, often resulting in relatively high limitation exposure.

Recent case law suggests that federal courts in New York may be prepared to give effect to express contractual definitions of "package" in bills of lading. In particular, clauses defining palletised or unitised cargo as the package have been upheld, even where the face of the bill of lading refers to a higher number of cartons.

In *Hercules OEM Grp. v. Zim Integrated Shipping Servs. Ltd.* (S.D.N.Y. 2023), the court enforced a bill of lading definition providing that for limitation purposes under the Hague-Visby Rules or U.S. COGSA, "package" means any palletized and/or unitized assemblage of cartons prepared for the convenience of the Merchant, regardless of whether the pallet or unit is disclosed on the face of the bill. Similar clauses were enforced in *Fed. Ins. Co. v. MSC* (S.D.N.Y. 2025) and *HDI Glob. Ins. Co. v. Kuehne + Nagel, Inc.* (S.D.N.Y. 2025).

The practical implications and commercial impact can be significant as limitation may be calculated on pallets rather than cartons. Because standard containers often contain no more than approximately 22 pallets, a pallet-based package limitation can reduce exposure to approximately USD 11,000 per container under COGSA's USD 500/package limitation, even when cargo value is much higher. Accordingly, the exposure for containerised cargo may in practice be reduced considerably depending on the facts and the wording used, as the number of packages – and therefore the limitation amount – is materially reduced. In practical terms, claims which previously represented substantial exposure may now be resolved at a considerably lower level.

Key considerations for Members

In light of this development, careful alignment between bill of lading and charterparty wording is essential to ensure that the intended limitation regime is effectively applied in practice.

Members trading to or via the United States may wish to review their Bill of Lading terms, to ensure that they:

• Include a clear and express definition of “package” (e.g. palletised or unitised goods)
• Incorporate COGSA by contract (Clause Paramount)
• Include a mandatory and exclusive Southern District of New York forum selection clause
• Ensure that the BL includes a fair opportunity for the shipper to declare a higher value

Suggested wording

The following Bill of Lading clause is modeled on language enforced by SDNY courts, including in Hercules, and may be considered:

For limitation purposes under the Hague-Visby Rules or US COGSA, the term “package” means any palletised and/or unitised assemblage of cartons prepared for the convenience of the Merchant, whether or not such pallet or unit is disclosed or identified on the face of this Bill of Lading.

As an additional practical mechanism beyond Bill of Lading drafting, a corresponding charterparty provision may be included to ensure that issued bills are consistent with the intended limitation regime:

Bills of lading/waybills issued under this Charter shall: (i) incorporate U.S. COGSA by contract where not compulsorily applicable; (ii) contain the pallet/unitised cargo “package” definition set out in Owners’ approved form; (iii) include an exclusive SDNY jurisdiction clause and New York governing law as set out in Owners’ approved form; and (iv) preserve fair opportunity for ad valorem declaration. Charterers shall indemnify Owners for any loss, liability or expense arising from issuance of non-conforming bills.

For Members, this development highlights a clear and timely opportunity to reduce claims exposure and strengthen their position through relatively simple but carefully considered Bill of Lading drafting.

This article draws on analysis first published by Montgomery McCracken Walker & Rhoads LLP’s Maritime and Transportation Industry Group in its April 30, 2026 article, “Redefining Package Limitation in the United States,” authored by Jon Werner and Robert E. O’Connor.

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